FARAD CONTINUATION SHEET.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

CIVIL APPLICATION No. 2672 OF 2006.
IN
WRIT PETITION No.3144 OF 1993.

Office Notes,Office Memorandum of Coram apperance,Court's Orders & Directions and Registrar's Order.	: Court or Judge's Order.

Mr. V. P. Sawant, Advocate i/b M/s. Rustamji & Ginwalla & Co. for the Petitioners.

Mr. S. H. Karim, Advocate for the Respondent No.1.

CORAM:R.M.S.KHANDEPARKAR,J.

DATED:1ST DECEMBER, 2006.

1. Heard.

2. This is an application for restoration of the Writ Petition No.3144 of 1993 which was dismissed on 10th of October, 2006 for non-prosecution on account of absence of the petitioners and their Advocate who appeared in the matter when the matter was called out for final hearing.

3. It is the case of the petitioners

that they were under a bona fide belief that the matter would not reach for final hearing on 10th October,2006 and that, therefore, they did not remain present at the time when the matter was called out and dismissed for non-prosecution. However, the Advocate for the petitioners appeared in the Court thereafter, but could not mention the matter as the Advocate for the respondent No.1 had already left the Court. On the other hand, it is the case of the respondent no.1 that the ground disclosed for absence of the Advocate for the petitioners is not borne out from the record, nor it can be said to be a genuine ground. It is a specific case of the respondent no.1 that on 9th October, 2006 the Presiding Judge had completed the hearing in the matter which was listed at Serial No.262 and by the end of morning Session the Court had completed the hearing of the matter listed on 10th October, 2006 at Serial No. 284. The matter in question was listed at Serial No. 300 and, therefore, the petitioners and their

Advocate ought to have expected that the same could reach any time during the afternoon Session of 10th October, 2006.

4. It is well settled law that for the purpose of hearing of a Writ Petition in the High Court, the presence of the parties is not necessary when the parties are represented by their Advocates. Here the presence of the Advocate while dealing with the application for setting aside of the order of dismissal of the petition for failure on the part of the petitioners and their Advocate who appeared in the matter, what is relevant is to be seen, is the cause disclosed for absence of the Advocates for the parties.

5. There has been a categorical statement on behalf of the petitioners that the Advocate for the petitioners was expecting that the matter would not reach for hearing on 10th of October, 2006 and therefore, he did not remain present in the Court at the relevant time. It is also stated on their behalf

that the Advocate did appear in the Court on the same day after dismissal of the petition. However, immediately thereafter he could not move the Court for restoration as the Advocate for the Respondent No.1 had already left the Court and secondly that it was a practice of Shri Justice D.G. Deshpande to insist for an application for restoration of the matter.

6. Considering the fact that the matter in hand was at the stage of final hearing and it is settled law that when a Writ Petition is admitted for final hearing, endeavour should be made to dispose of the same on merits, rather than to dispose of the same on a technical ground. Considering the same and as the application discloses an error in the judgment and as the application discloses sufficient cause for absence of the Advocate for the petitioners at the time when the matter was called out and dismissed for default, in my considered opinion, the sufficient cause being shown for absence

of the Advocate for the petitioners at the relevant time and, therefore, the Application needs to be allowed. Needless to say that in view of certain guide-lines laid down by the Apex Court, the respondent no. 1 needs to be compensated, while allowing the application for restoration of the writ petition.

7. In the result, the application is allowed. Writ Petition No. 3144 of 1993 is restored to the Board for final hearing, subject to payment of costs of Rs.1000/- by the petitioners to the respondent No.1.

8. The Writ Petition No. 3144 of 1993 be listed for final hearing in the week commencing from 8th January, 2007.

[R.M.S.KHANDEPARKAR,J.]